IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

OP.No. 6644 of 2001(N)

PETITIONER:

KRISHNAN @ KUNJUKUNJU,
S/O.PAPPAN,
UDUMPANNUR.P.O.,
THODUPUZHA TALUK.

BY ADV. SRI.K.R.SACHIDANANTHAN

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE GOVERNMENT SECRETARY,
DEPARTMENT OF REVENUE SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR,
IDUKKI DISTRICT,
KUYILIMALA, PAINAVU.P.O.

3. DEPUTY TAHSILDAR,
REVENUE RECOVERY,
THODUPUZHA TALUK,
THODUPUZHA.

4. AGRICULTURAL INCOME TAX AND SALES TAX OFFICER,
ADIMALY, IDUKKI DISTRICT.

5. K.S.KAREEM, S/O. SULAIMAN,
KANDATHIN KARAYIL HOUSE,
CAMPCO JUNCTION,
ADIMALY.

*6. COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

(*IMPLEADED AS ADDITIONAL 6TH RESPONDENT IN THE ORIGINAL PETITION AS PER JUDGMNET DATED 05/12/2007 IN THE ORIGINAL PETITION)

BY SHRI.K.P.PRADEEP, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO. 6644/2001

ORDER ON CMP NO.10944/2001 IN O.P.NO. 6644/2001

DISMISSED.

05/12/2007 SD/-(C.N.RAMACHADNRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE REVENUE RECOVEYR DEMAND NOTICE DATED 14/08/1998.

P2 : COPY OF THE ATTACHMENT NOTICE DATED 01/09/98 ISSUED by the 3RD RESPONDENT to the PETITIONER.

P3 : COPY OF THE ATTACHMENT ORDER PASSED by the 3RD RESPONDENT ON 06/11/1998.

P4 : COPY OF THE NOTIFICATION DATED 11/11/1998 ISSUED BY the 3RD RESPONDENT to the PETITIONER.

P5 : COPY OF THE PETITION DATED 25/11/1998 SUBMITTED BY THE PETITIONER BEFORE THE REVENUE MINISTER.

P6 : COPY OF THE PETITION DATED 08/12/1998 SUBMITTED BY THE PETITIONER BEFORE THE VIGILANCE DIRECTOR.

P7 : COPY OF THE AUCTION NOTICE DATED 15/02/2001 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

P8 : COPY OF THE INTERIM ORDER PASSED BY THIS HONOURABLE COURT IN CMP 35980/1998 IN O.P.NO. 20422/1998 DATED 08/12/1998.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. No. 6644 of 2001

Dated, this the 5th day of December, 2007

J U D G M E N T

The Commissioner of Commercial Taxes, Thiruvananthapuram is impleaded as additional 6th respondent in the original petition.

2. Petitioner is a surety, who executed bond in Form-6 for granting registration to 5th respondent, who carried on business in timber and incurred a liability of Rs.1,36,14,546/- during the year 1996-97. Petitioner is proceeded against recovery because defaulter is not traceable. Of course, liability of petitioner is limited to the bond amount, details of which are not furnished in the original petition. Petitioner's challenge against recovery proceedings is not maintainable because he is liable to pay the amount covered by the bond. It is seen that petitioner has filed O.S.280/98 before the Munsiff Court, Thodupuzha, which is stated to be dismissed. In any case, when the matter is challenged in writ proceedings and this Court decides the matter on merits, no parallel proceedings can be maintained in the civil court. Therefore, if there is any appeal filed or pending, the same has to be only dismissed as not maintainable. Since the amount covered by bond is not on record, it is for the 4th respondent to furnish the details of the same to the

3rd respondent for him to proceed for recovery against petitioner. There will be direction to the 3rd respondent to limit the recovery for the amount covered by the bond executed by the petitioner.

3. I am unable to accept the contention of respondents 2 to 4 that the defaulter is not traceable. It is the duty of the respondents 2 to 4 to trace the defaulter and proceed for recovery. Therefore, there will be direction to the additional 6th respondent, Commissioner of Commercial Taxes, to refer the revenue recovery matter to the Police for enquiry to find out the whereabouts of the defaulter and about his concealed or benami wealth and proceed for recovery in accordance with law. Actions shall be taken by the Commissioner based on report of enquiry and recovery should be expedited. The Commissioner should also make enquiry under what circumstances tax got accumulated and if monthly returns were filed without payment of tax, why registration was retained etc. and take suitable action.

4. This original petition is disposed of as above.

Issue copy to this judgment to learned Government Pleader for forwarding the same to the additional 6th respondent.

(C.N.RAMACHANDRAN NAIR, JUDGE)

jg